ACCOUNTANCY

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President: RICHARD A. WITTY, F.S.A.A. — *Secretary:* A. A. GARRETT, M.B.E., M.A.
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CONTENTS

PROFESSIONAL NOTES

Bank of England Anniversary

The 250th anniversary of the Bank of England was doubly commemorated by the conferment of a Barony on Mr. Montagu Norman and by the publication of a scholarly history of the Bank by Sir John Clapham. "It would not be fantastic to argue," as Sir John says, "that the Bank in 1944 was further from 1914 than 1914 was from 1844; in some not unimportant ways further from 1914 than 1914 was from 1714." These far-reaching changes took place almost entirely under the direction of Mr. Montagu Norman, who guided the destinies of the Bank for twenty-four years, and the modern institution as we know it to-day is largely his creation, as the new Governor, Lord Catto, pointed out at the anniversary luncheon. Speaking on the same occasion, the Chancellor of the Exchequer said that "the interplay of public and private finance has led to the development of a mechanism which is a credit both to the Bank and the Government." Moreover, the flexibility of our unwritten constitution is a source of strength enabling the Bank to move with the times and to adapt itself to changing conditions. "No doubt," as Sir John said, "it will play a worthy and significant part in the development of economic policies to be pursued after the war and already outlined in White Papers." At the same time, "neither the Bank nor any other body working for the Government can determine policy; the power to do that is the prerogative of Government and Parliament alone. What the Bank can do and does is to give candid advice based upon experience."

Solicitors' Accounts Rules and Trust Accounts Rules

The Law Society has now published the text of the Solicitors' Accounts Rules, 1945, and Solicitors' Trust Accounts Rules, 1945, with an explanatory memorandum. Both sets of Rules will come into force on January 1, 1945. Ten years ago it became compulsory for every solicitor to keep clients' monies in a separate bank account, and to keep adequate records of his transactions, so that the money of each client is always clearly distinguished in the solicitor's books. The Solicitors' Trust Accounts Rules apply similar provisions to trust monies where a solicitor is trustee, in accordance with Section 18 of the Solicitors Act, 1941. As the making of these new Rules necessitated some modifications in the Solicitors' Accounts Rules, 1935, the Council of the Law Society decided to replace these by a revised set of Rules, at the same time taking the opportunity to remove misunderstandings and ambiguities. This was particularly desirable because after the war Section 1 of the Solicitors Act, 1941, will be brought into operation, requiring a solicitor to deliver annually an accountant's certificate of his compliance with the Solicitors' Accounts Rules, and the Rules will therefore have to be construed constantly by the accountants.

The Monetary Conference

The "bulk of lucid solid construction," in Lord Keynes' words, achieved at the Bretton Woods monetary conference promises well for the future co-operation of the United Nations. By dint of concessions to the Latin American countries in respect of their representation on the Executive Committee, and to the Soviet Union in respect of the size of its quota, the agreement of all the nations represented was secured within the space of a week to the establishment of a Monetary Fund on the general lines set out in the "Joint Statement by Experts" published as a White Paper in April last. Out of quotas totalling $8,800 million, $2,750 million are allocated to the United States, $1,300 million to the United Kingdom, and $1,200 million to the U.S.S.R. Including the United Kingdom, British Empire quotas as a whole aggregate $2,350 million. In some important respects, unfortunately, the final draft of the scheme represents a backward step in the direction of the deflationary White Plan. There no longer appears any provision for the rationing of scarce currencies, or for discriminatory exchange restrictions against the exports of a country which allows its currency to become scarce. Instead, the Fund is empowered simply to present a report, and to replenish its holdings of the scarce currency by borrowing. An important new feature provides for the levying of interest charges on member countries, based on the average daily balance of its currency held by the Fund in excess of the member's quota. Since there are no corresponding provisions for the charging of interest on credit balances, which would discourage the running of a persistent export surplus, the scheme is to this extent biased against expansionary policies, and in favour of deflationary policies.

World Bank Plan

As this issue of ACCOUNTANCY goes to press, final agreement has still to be announced on the provisions for management of the proposed World Bank, but full accord was brought appreciably nearer by the last-minute decision of the Soviet Union to increase its subscription from $900 million to $1,200 million, the amount of the Russian quota under the Monetary Fund scheme. Since the United States has agreed to subscribe $3,175 million, or $300 million more than its quota under the Fund, the total assets of the Bank will amount to $9,100 million, of which 20 per cent. will be paid up. As chairman of the Commission dealing with the World Bank plan, Lord Keynes has explained that it will fill an important gap resulting from the fact that it is no part of the purpose of "U.N.R.R.A." to provide funds for reconstruction, as distinguished from relief and rehabilitation, in the days immediately following liberation. In the years immediately after the war, it is recognised, only a few countries, notably the United States, will possess resources available for the finance of reconstruction. The novel feature of the plan is that the other participants will also assist in the finance of reconstruction by underwriting the loans granted. For its part, the Fund will charge a commission, probably of 1 per cent., for its services to the borrower in securing this joint international guarantee. By greatly reducing the risk involved, the Bank should thus make it possible to finance reconstruction at reasonable rates of interest, while still being able to build up useful reserves against defaults.

Surplus Stocks

The policies which the Government proposes to follow in the disposal of surplus stocks after the war have been outlined in a White Paper. It is, of course, difficult to make hard and fast generalisations. Some surplus stores must be earmarked for the relief of liberated countries; others will be needed for the Japanese war; raw materials will be governed by the appropriate controls; military supplies may or may not have a scrap value; and fixed assets such as Government factories do not at present come into the picture at all. Nevertheless, the basic fact is that, where a true surplus of a particular type of store exists, the most economic use of our resources would be to resume production in that line only when the surplus has been liquidated, diverting the capacity concerned on to some other line of production in the meantime.

From the White Paper, it is not altogether clear to what extent these considerations have been, and will be, taken into account. Three general principles are laid down: (a) the stocks are to be released at a rate which "while fast enough to get the goods into the hands of consumers when they are most required and to clear badly needed storage and production space, aims at avoiding adverse effects on production through flooding the market; (b) unless there is good reason to the contrary, to distribute the goods through those traders or manufacturers who would normally handle or use them, and to secure that ultimate consumers in all parts of the country have a fair opportunity to buy them; (c) to ensure, if necessary by statutory price control, that the prices charged to the ultimate consumer are fair and reasonable in relation to the current prices of similar articles, to prevent profiteering on the part of dealers handling the goods, and to keep down the number of intermediaries to the minimum." It is added that the way in which these principles can best be applied will be decided "with due consideration for the needs of consumers and after consultation with representatives of the industries and trades concerned." On the face of it, these proposed arrangements suggest an obvious danger that the interests of the consumer will in fact be subordinated to that of producers, and that liquidation will be unduly retarded for the sake of maintaining employment and output in individual lines of production—which is a quite different thing from a policy of full employment for the economy as a whole.

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COMPANY LAW REFORM

An indication of the high degree of importance which must be attached to the evidence of the Institute and of the Society before the Company Law Amendment Committee is contained in a suggestion by a member of the Committee "that publicity is really the price of limited liability"; it is clearly to accountants experienced in the presentation of facts that the Committee must look for advice on how much disclosure they consider to be desirable, and on how far the suggestions of others are practicable.

The Society recognised the inherent dilemma in regard to information in prospectuses. If it is comprehensive, the investor may find difficulty in discerning the facts which are really salient; and the Institute witnesses considered that the Society's suggestion that there should be published a reconciliation between the figures of past profits shown in the accounts and those in the certificate in the prospectus would provide too much detail. But the Institute recommended that if the adjustments are material, their nature should be published, and both bodies recommended the publication of the last audited balance sheet from which the results of re-valuations for prospectus purposes would be apparent. There was also full agreement that details of the expenses of the issue should be given greater prominence.

The most striking feature of the recommendations on accounts was the emphasis on the importance of the published profit and loss account, and of a consistent basis year by year. Practically all the recommended changes were based on the experience of accountants who had already persuaded their clients to exceed the existing minimum requirements, and it was emphasised that further progress should not be restricted by the adoption of standard forms of account. Both bodies recommended that the auditor should report on the profit and loss account as well as on the balance sheet. The Institute submitted a revised form of wording of audit report, and it is interesting to note the suggested wording "true and fair," in place of the traditional "true and correct." These adjectives, of course, qualify a "view" and it may well be that it was considered that the word "fair" emphasised the possibility of there being more than one true and fair view. On the other hand, "fair" has other meanings; and "correct," besides being a synonym of "true," has the additional meaning of "in accordance with a good standard."

No changes in the present method of the appointment of auditors were recommended by the profession to the Committee, although the witnesses were invited to consider suggestions that the appointment as auditor should always be personal, firms not being eligible for appointment, and that, as in the case of a public company, a person who is a partner of or in the employment of an officer of a private company should not be eligible. Neither body favoured these suggestions.

A good deal of attention was paid to the position of holding companies and subsidiaries. While it was agreed that information should be provided equivalent to that conveyed by a consolidated profit and loss account and balance sheet, there was no recommendation that these should be made obligatory in all cases, and alternative methods of providing the information were suggested.

The private company had been the target of much criticism from previous witnesses before the Committee. Freedom from the obligation to file a balance sheet is, of course, the chief privilege of a private company, and the Institute, pointing out that many family businesses had been incorporated under Acts which did not require disclosure of their private affairs, did not recommend a change. The Society advocated that accounts of private companies should be circulated to all shareholders, and that the exemption from filing a balance sheet should be removed while a floating charge on the company's assets was outstanding. Although filing provisions have often failed in their purpose owing to delay in the information becoming available, there is no doubt that this suggestion would be likely to protect creditors in such cases, while leaving ungratified curiosity as to the affairs of the majority of private companies.

A good deal of attention was paid to those cases of members' liquidations in which the creditors were not, in fact, paid in full. Declarations of solvency are so dependent upon valuations that an audit certificate would be impossible. The Society, however, recommended that such declarations should in all cases be accompanied by a statement of affairs made up to a date not more than one month prior to the date of the declaration, and a copy of the last audited balance sheet. The Institute witnesses did not agree with the second requirement, which, it was explained by the Society's witnesses, had been suggested so that the extent of the recent losses could be discerned and explanations elicited.

The general view of the profession is expressed in the introduction to the Society's memorandum "that the great majority of companies (both public and private) are honestly and properly conducted, and that the Companies Act, 1929, has operated satisfactorily in relation to them." It is equally true, however, that some changes in the law which will be of the greatest importance in practice may be anticipated, and the Minutes of the Evidence of the Institute and of the Society will repay the most careful study by every accountant.

Rent Control

By MAURICE SHARE, Barrister-at-Law

Early in the last war it was found necessary in the public interest to control the operation of the laws of supply and demand as they affected rents for dwelling accommodation. In December, 1915, an Act was passed to restrict the rent and mortgage interest of houses of which the standard rent or rateable value did not exceed certain low limits, viz., £35 in London, £30 in Scotland, and £26 elsewhere. The standard rent was "pegged" at the rent as it stood on August 3, 1914, or where a house was not let at that date, the last previous rent, or if first let after that date, the rent at which it was then first let. Similarly, the rateable value to which reference was to be made was that prevailing on August 3, 1914, or if first assessed thereafter, the value at which it was then first assessed. Except for certain limited increases for repairs and rates, the standard rent was not to be raised, and there were also provisions restricting the rate of mortgage interest. Moreover, court orders for the recovery of possession of premises or ejectment of tenants were not to be made except on the ground of requirement of the premises by the landlord for his own occupation, or nuisance to neighbours, or certain other good reasons.

The future extent of the housing shortage was under-estimated in 1915. In 1918 and 1919 it was found necessary to pass three amending Acts, the last of which extended the scope of the new law to cover premises up to double the values laid down in the 1915 Act.

In 1920 an amending and consolidating Act was passed. It was and is important for two main reasons. The first was that it extended restriction to 98 per cent. of all the dwelling-houses in the country, *i.e.*, to houses of which the annual amount of the standard rent or rateable value was not more than £105 in London, £90 in Scotland, and £78 elsewhere. The second is that it remains the principal code on which the law of rent restrictions is operated.

The chief difficulty for the Courts in the early days of rent restrictions arose from the alteration of the landlord's common law rights by the creation of the statutory tenancy. Eventually this was solved by deciding that the tenant's right of occupation was purely personal to himself and his family, and was not assignable (*Keeves* v. *Dean* (1924), 1 K.B. 685), or transferable by operation of law or otherwise.

Measures of Partial Decontrol

In 1923 the legislature decided that landlords who then or thereafter came into possession of their premises should be entitled to regard their houses as "decontrolled." The making of a lease of at least two years' duration was also to end the control.

At first the Acts were intended to be merely temporary. The 1919 Act extended the operation of the 1915 Act until 1921. The 1920 Act was to continue in force until 1923, but in 1923 it was continued until 1925, and again in 1925 until 1927. Thereafter its operation was renewed yearly by the Expiring Laws Continuance Acts.

In 1933 the housing situation was easier, and an Act was passed to effect a further measure of decontrol. Houses were classified in three categories, according to rents and rateable values. Those of Class A (yearly rents and rateable values from £45 to £105 in London, £45 to £90 in Scotland, and £35 to £78 elsewhere) were completely decontrolled. Those of Class B (rent or rateable value £20 to £45 in London, £26 5s. to £45 in Scotland, and £13 to £35 elsewhere) could be decontrolled only by the landlord coming into possession or granting a lease of at least two years' duration to the tenant. Those of Class C (rateable value up to £20 in London, £25 6s. in Scotland, and £13 elsewhere) were kept under control, and a landlord's coming into possession or granting a lease was not to decontrol them. A landlord who had then already obtained decontrol in this way was to be protected in his decontrol by registering with the local authority.

In 1938 the control was again altered. Houses up to £35 in rateable value in London and Scotland, or £20 elsewhere, were to continue to be controlled if they were not then registered as decontrolled. The reference was to rateable value only, and not to rent. All houses above this class were decontrolled. The provisions of the 1923 Act relating to decontrol on the landlord obtaining possession or granting a lease were repealed. There were, however, provisions protecting landlords of the class of houses the control of which was continued by the Act, provided that they registered the fact of decontrol.

That, in the briefest outline, is the history of the matter up to September, 1939. Many important matters are necessarily omitted, for instance, the consequences of the original control and later decontrol of business premises, and the history of the control of mortgages.

The Act of 1939: Standard Rents and Anomalies

In September, 1939, it became necessary, for obvious reasons, to restore a full control. This was done by passing an Act continuing the previous Acts in force, and applying them with modifications to all uncontrolled dwelling-houses of a rateable value up to £100 in London, £90 in Scotland, and £75 elsewhere. One of the modifications was that the standard rent of houses brought into control by the 1939 Act was to be determined by reference to September 1, 1939, and not August 3, 1914. Thus, it will be seen that, for no very logical reason, there are now in existence two classes of controlled house, one of which has its standard rent fixed by reference to a date in 1914, and the other by reference to a date twenty-five years later, when values had greatly changed.

Another unfortunate aspect of the law as to standard rent was brought into high relief by a recent Court of Appeal decision (*Davies* v. *Warwick* (1943) 1 K.B. 329). That case decided that in order to ascertain the standard rent, it may be necessary to refer back to 1916, or even, as Lord Justice Scott said, to some "prehistoric letting," which "might

take one to a time when economic conditions and the value of money were totally different from what they are to-day." Lord Justice MacKinnon spoke of "the hasty and ill-considered language of the statute," and said that the reference back may be five hundred years ago, or to a letting which was an act of charity. Lord Justice Goddard said that it was too much to expect a litigant to understand problems which had puzzled judges, and so, as the defendant found to his cost, house property was a dangerous form of investment. The defendant, who was the landlord, was ordered to repay rent at the rate of 8s. 3d. a week over the standard rent of 4s. 3d. per week.

Enough has been said to demonstrate the complete nonsensicality of the present law as to standard rents. The language of Lord Justice MacKinnon in *Winchester Court, Ltd.* v. *Miller* (*The Times*, June 28), a case on this subject, could not be more apt: "He must be a bold, if not a conceited, man who can feel confidence in forming or expressing an opinion as to any one of the innumerable problems that arise out of the Rent Restrictions Acts, 1920 to 1939, but having once more groped my way about that chaos of verbal darkness, I have come to the conclusion, with all becoming diffidence, that the learned County Court Judge was wrong in this case. My diffidence is increased by finding that my brother Luxmoore has groped his way to the contrary conclusion."

Proposals for Reform

It may well be that the anomalous state of the law as to standard rent is due to the fixing of standard rents by reference to specific dates. An interesting recommendation by the Auctioneers' and Estate Agents' Institute to the recently appointed Inter-departmental Committee on Rent Control was that the gross values as ascertained by the valuation for rating purposes should be used as basic rents to take the place of standard rents, and that the position should be reviewed every five years. The General Council of the Sanitary Inspectors' Association has put forward a similar proposal.

The Auctioneers' and Estate Agents' Institute also recommended that rent tribunals should be set up. The Council of the Law Society considers, however, that the ordinary Courts of law are the best tribunals for this class of dispute. No one who has heard a County Court Judge deal with hardship cases under para. (h) of the First Schedule to the 1933 Act in the present conditions of acute housing shortage can doubt the Law Society's contention for one moment. The fact that rent tribunals have been set up in Scotland is due to the very different conditions operating there.

Space is left to deal with only one of the many other points that have arisen, and that quite shortly. Furnished lettings generally are excluded from the operation of the Acts except that it is an offence (1920 Act, Section 10) to charge extortionate rents for furnished premises. The reluctance of magistrates to find that a rent is extortionate is only equalled by the reluctance of tenants to complain. The recommendation of the Council of the Law Society that furnished lettings should be controlled deserves careful consideration. This could be done by adding a percentage of the value of the furniture to the standard rent, disputes to be settled by the County Court.

This article has attempted to outline what, in the words of the old interpretative maxim, is "the old law" and "the mischief." It will be for the Committee on Rent Restrictions to recommend the remedy, and so far help has not been lacking from those bodies of professional men most qualified by their experience to advise on the subject.

British Industrial Profits

By F. W. FORGE, City Editor, "Glasgow Herald"

Any attempt to assess the absolute level of the wartime earnings of British industry is doomed to failure by reason of the general inadequacy of published accounts and the censorship regulations as to the disclosure of E.P.T. appropriations. The best that can be expected is that some idea may be gained of the trend of profits. Even this hope is likely to be defeated by undisclosed changes in the basis on which accounts are prepared from year to year. Even where figures for the preceding year are given, these are not always comparable. Possibly the error in the aggregate figures arising from this cause is moderate, but the error in the change from year to year is, probably, much greater, and may be large enough to distort the final calculations to a considerable extent.

Apart from such evidence as may be obtained from tax returns and from the annual Budget White Paper, the principal source of information concerning industrial profits in this country are the indices of *The Economist*. Of these the old so-called "net" figure is an index of reported profits before depreciation, where that figure is given, but after tax on dividends. The new "gross" figure is a calculation of profits after depreciation, but after adding back to reported figures income tax, at the rate ruling at the date to which the accounts are made up, on all appropriations deemed to be subject to tax. These two figures tell very different stories. If the first quarter of 1939 is in each case equated to 100, the *net* reported index fell to 72.3 for the third quarter of last year, and had recovered to 75.1 by the first quarter of this year. At no time has this index been as high as at the opening of the period. For the *gross* index, the figures were, with one exception, only below the opening level in each of the four quarters of 1941. The index sank to 96.9 in the third quarter of that year, rose to a maximum of 105.5 two years later, and then fell slightly. The gross index refers, however, to accounting dates, not dates of presentation, as does the net index, and this means that recent figures are never quite complete, and it is possible that they will be subject to minor revision later.

Apart from the need to adjust the date of the net

index if it is desired to compare its movements with those in the gross, the chief difference between the two is that, while all sorts of reserve allocations appear net in the net index, they are grossed up in the other. The remaining difference of importance is the exclusion of depreciation from the latter, which is really an attempt to assess the gross amount of money available for all classes of capital, including loan capital. Had it been feasible to add in depreciation—this is not disclosed by a large number of very important companies—the rise in industrial earnings disclosed would probably have been greater, but how much greater it is impossible to say. Further, if the intention is to discover the movement of profits of concerns operating inside these islands, it has to be remembered that these figures include earnings of oil, rubber and tea companies. By and large, the sharp falling off in rubber plantation earnings since the entry of Japan into the war has more than offset any modest recovery in oil profits.

Recent Increase in Disclosed Profits

Taking account of these qualifications, it appears that the disclosed profits of British industry, productive, distributive and miscellaneous, as revealed by these figures, increased considerably in each of the two years 1942-43, but that it was not until the closing quarter of 1942 that the figures rose above the 1940 level. It may be that this is a reasonably accurate picture of the actual sums available for the remuneration of capital and addition to true reserves—as distinct from provisions other than provisions for reduction of debt, appropriations for deferred repairs, and similar specific savings. It is, however, by no means the course of earnings which would be expected from a general knowledge of the conditions under which industry has operated.

Very briefly, there has been no relaxation of the full rigours of E.P.T., and for many concerns, notably in the elementary stages of the heavy industries, retained profits have been reduced to a level at which no E.P.T. was payable by strict supervision of contracts. Outside the range of Government contract work—direct or indirect—there has been a progressive fall in the supply of both materials and labour which has in many cases tended to make for a reduction in profits. It is true that the fiscal policy has made breweries and tobacco companies an exception to this rule. It is also true that the periodic suspension of bombing has made for a recovery in the earnings of the entertainment industry. Also the reduction in the services which shops have been able to render to their customers has tended at least to arrest the fall in earnings of some of these concerns, if not to permit an actual increase. Even so, it is hard to see whence comes the increase in real earnings. The explanation of the discrepancy between what might be expected and what is actually revealed lies probably in the fact that, depreciation apart, undisclosed provisions were probably not only greater in the early days than in the later, but greater than they need have been. In a number of recent cases, accounts have actually shown provisions written back. These are not included in the profits of the period under the gross figures of *The Economist*, but it has not been possible to add them back to the profits of the periods when they originally accrued.

It is no part of the purpose of this article to attempt to show that the earnings of the investor from the holding of equity shares have failed to benefit from the war, but it is worth noting that until quite recently a higher proportion of disclosed gross profit was retained in the form of reserves and less distributed to the owners of capital year by year. This process has recently been reversed, but the increase in distributions is of the order of 1½ to 2 per cent.

Are Retained Profits Adequate?

It is more important to enquire how far retained profits have been sufficient to maintain, in terms of money, the capital structure of British industry. Such figures as are available suggest that the proportion of profits ploughed back, after deducting certain elements which ought properly to be considered as arrears of physical maintenance, is about 20 per cent. per annum. That is to say that of five wartime years' profit, about one year's has been ploughed back. The amount of these savings for the numerically small, but absolutely important, section of companies covered by *The Economist*, some 2,300 in number, is about £60 million per annum. The figures of impersonal savings of the Budget White Paper suggest approximately three times that figure for all enterprise, including trade, agriculture, and the professions. In addition to this ploughing back, there is a sum due to be repaid to industry on the E.P.T. refund, which possibly represents something of the order of £100 million net. This may increase the total ploughed back by 8 to 12 per cent., but the distribution will be very uneven.

The question whether or no reserves of this amount will suffice for post-war requirements must be considered in the context, first, of the post-war level of money prices, and, second, of the extent to which depreciation and obsolescence allowances already on hand can contribute to the maintenance of the physical capital of the country at its pre-war level—although not necessarily its pre-war composition. This is the first requirement, but the second and not less important is that the money value of stock-in-trade and other working capital shall be increased by the amount of the rise in prices.

Information on this subject is scanty and not too reliable. Balance sheet figures have been greatly swollen and gross liquid assets probably show rises in excess of the decline in the value of money as valued by existing indices. But much of this represents tax provision and there has been a much smaller rise in the volume of net liquid assets. Accounts of companies are uninformative, for, with a few exceptions, they do not show the effects of war damage on fixed assets, nor have compensation payments been made for this loss in a majority of cases. In shipping, where such payments are automatic, the expansion in net liquid assets is very great, but there is no industry more vocal than shipping in proclaiming that they are insufficient for replacement. The heavy section of the iron and steel industry is not at all vocal on this point, but it is virtually certain that,

in view of the small E.P.T. payments of the past year or two, its reserves will be far from generous.

The impression created by such figures as exist, and they are too fragmentary to permit of more than an impression, is that in many cases, where loss of plant has been considerable or extensive modernisation is essential, funds will prove inadequate for these purposes. It must be remembered that, even where firms had made partial preparation for capital outlays before the war, and these were suspended for the duration, the money will no longer suffice for the same amount of equipment. By and large, it seems extremely probable that, while some firms may have enough on hand even to finance expansion, most concerns will need new finance fully to cover wartime consumption of physical capital and the replacements necessary to catch up on even five years of obsolescence. Since there were already in 1939 substantial arrears of obsolescence, it is extremely probable that the demand on the public for new capital will be very considerable. How long it will be before the materials for physical reconstruction are available is a matter of doubt, but delays in modernisation are likely to reduce a firm's ability to finance replacement out of its own resources once the period of acute shortages is over.

Company Law Amendment Committee

In our last issue we reproduced the complete text of the memorandum submitted on behalf of the Society of Incorporated Accountants to the Company Law Amendment Committee of the Board of Trade. We present below an abridged report of the oral evidence, which was given by Mr. E. Cassleton Elliott, Past President, and Mr. A. Stuart Allen, member of the Council. We are also continuing the series of summaries of the written and oral evidence of other bodies and persons. The complete Minutes of Evidence are obtainable from H.M. Stationery Office.

The Society of Incorporated Accountants and Auditors

Evidence on behalf of the Society of Incorporated Accountants and Auditors was given on the seventeenth sitting day by Mr. E. Cassleton Elliott and Mr. A. Stuart Allen. This supplemented the memorandum already submitted by the Society, which was reprinted in last month's ACCOUNTANCY.

On the Society's suggestion that the part of the prospectus which deals with facts should be clearly separated from the part which deals with matters of opinion, Mr. Justice Cohen asked whether it was not better to leave that kind of thing to the standards of the profession rather than endeavour to legislate on something where there was no clear dividing line. Mr. Allen replied: "A valuation is, of course, a matter of opinion, but as the valuation is, in fact, the basis of the price which the company is paying, it becomes a fact and will, of course, have its reactions upon the depreciation and various other factors which would have to be introduced into the profit figures. There may be some difficulty in legislating for the difference between facts and opinions, and what we are really seeking, since our other proposals would involve an increase in the material that would be included in a prospectus, is that the accountancy and legal material should, so far as is possible, be separated from the pure prospectus—that is, the part which deals with prospects. Thus the ordinary investor, who perhaps is not very familiar with accountancy and legal matters, might be able to see the story of the new company in the part that deals with prospects. The other matter would be available and subject to criticism by advised opinion in the Press and elsewhere."

Coming to what he conceived to be the salient difference between the Society's views and those of the Institute of Chartered Accountants, the chairman pointed out that the Society wished the auditor's certificate in the prospectus for prospectus purposes to be confined to past results, leaving modifications or adjustments to be a matter for the directors, whereas the Institute thought that this should be a part of the accountant's responsibility. Mr. Elliott said that the Society did not like the phrase "after making such adjustments as in our opinion are necessary." He agreed that the Society's proposal would mean three columns: (1) profits unadjusted, (2) adjustments with perhaps some sub-division showing the matters in respect of which they are made, and (3) adjusted profits. On the recommendation that there should be a brief statement of the contents of contracts, the chairman pointed out that the legal witnesses before the Committee had suggested that there would be great difficulty in preparing a summary sufficiently concise to avoid overloading the prospectus, and yet sufficiently detailed to avoid the risk that a disgruntled investor might allege that the statement was misleading. Mr. Elliott replied: "I would suggest simply the dates of the contracts, and short descriptions—for example 'the managing director's service agreement.' Nothing more than that." On the question of new issue expenses, the following passage ensued:

Mr. Justice Cohen: The Institute suggested that the statement of the expenses of the issue should be related to the monies to be subscribed so as to show the proportion which one figure bore to the other.

Mr. Elliott: I think that is an excellent idea, but I would also like to see some details of the cost of the issue, too, to show who is having the money. Mr. Allen will be able to give you details of one of the issues we looked at last night.

Mr. Allen: In the case of an issue made in January, 1939, we found that out of a total amount of £115,000 which was subscribed by the public, no less than £20,000 represented the expenses of the issue.

Asked for the Society's views on the suggestion that, while the accountants should not be responsible for all the statements in the prospectus, they should incur a liability to the people who subscribe on the prospectus for the statements covered by their own certificates, that is to say, statements of profits and balance sheet, Mr. Elliott said: "We really feel, I think, that subject to the sub-division of the prospectus into a part dealing with facts and a part dealing with matters of opinion, the accountant ought to be prepared to accept the responsibility for the work that he has done in the part dealing with facts, and be responsible to the subscriber beyond the normal contractual liability to the company."

Discussing offers for sale, Mr. Elliott urged that whenever the public was asked to purchase shares *en bloc*, full information should be given in the offer for sale exactly as in a prospectus. He agreed that the directors should be liable to persons who purchased the shares on the conditions in the statement.

Mr. Justice Cohen: The position is rather awkward, is it not? Take the case of shares which have been allotted perhaps twenty years ago, they have been held all that time by a man who perhaps controls the company, and then he dies and his executors want to make such an offer. The directors are *prima facie* under no obligation to make any statement to the public. Would you impose on the directors an obligation to publish a prospectus to enable those executors to make a sale?

Mr. Allen: It is a matter of difficulty, one agrees, but since the directors must be aware that for the first time they are becoming liable to the investing public, it seems to us an obligation that they can hardly escape.

Mr. Elliott expressed the Society's view that it was unnecessary for private companies to file their accounts, adding that a private company was in effect a partnership between a few people. He agreed, however, that if a private company were a subsidiary of a public company, or the parent of a public company, it should be bound to file its accounts. Asked for his opinion on a suggestion of the Association of Certified and Corporate Accountants that directors or members of a private company with a controlling interest should not be allowed to have any charge on the assets of the company except on the terms that it is voidable against the creditors, Mr. Elliott was definite that this might impede legitimate business. Another proposal of the Certified Accountants was that it should be an obligation for the receiver to inform the liquidator and/or the creditors that he is about to realise the security, and thus give an opportunity for the creditors to submit an offer in excess of the one that the receiver proposes to accept. Commenting on this, Mr. Elliott said: "If you want to offer the property to the creditors, it means the whole of the creditors, and there may be a large number of creditors, and in dealing with property it is necessary sometimes for the receiver to act promptly; if there is delay he may lose his market. I think the receiver, generally speaking, acts fairly and obtains the highest price which in his opinion is obtainable; if, having obtained that price, he is then bound to inform the creditors that he is prepared to sell the property at that price, I think it might spoil his market."

On the question of the financial relations of companies and directors, Mr. Allen said: "We believe that the integrity of directors as a whole can hardly be preserved by legislation. Our feeling was that any legislative provisions would be so belated and elaborate as not to be very effective."

Replying to the chairman when he turned to discuss the question of accounts, Mr. Elliott declared that certain minima ought to be laid down in regard to the profit and loss account and balance sheet. It has been represented to the committee that the auditor's report does not afford the protection it should because the auditor only has to certify that the balance sheet gives a true and correct view of the company's affairs as shown by the books, and does not therefore guarantee that the books give a true and correct view. Mr. Elliott took no objection to the suggestion that the auditor should be required to certify that the balance sheet is in accordance with the books, and shows a true and correct view of the company's affairs, adding: "It is really an improvement in the wording of the Act, but I think that it is already interpreted in the form in which you now suggest that it should be." He did not favour a proposal made by the Certified Accountants that, in order to alleviate the position of an auditor subjected to pressure by the directors, the auditor should have the right of appeal against his removal to the Board of Trade or other appropriate body. Mr. Allen made it clear that, while the Society could not say "You must have consolidated accounts," because of the difficulties, it did, broadly, agree that full information should be available for the group as a whole, if possible.

When Sir Edward Hodgson examined the witnesses, he dealt with the point that the work of preparing an annual return of directors' dealings might be laborious, suggesting that it would only be laborious where the transactions were numerous and that it is where the transactions are numerous that there is a possibility they have been undertaken for the purpose of speculation. Mr. Allen agreed, but he added: "I think the suggestion is not so much that the work is laborious, as that the information would be available belatedly, and, of course, if the intent were sinister, the dealings would not be in the names of directors, but in other names."

The Society has suggested that instead of a Board of Trade investigation under Section 135, there should be an alternative permitting holders of 5 per cent. of the shares to give the directors notice of a resolution. Sir Edward asked if such a low percentage might not lead to frivolous requests, particularly in the case of private companies; but Mr. Allen pointed out that a request would only lead to a meeting and a discussion, and that thereafter the dissentients would have to attract the support of at least 25 per cent. of the shareholders before anything really serious happened.

Sir Edward: And those 25 per cent. are to be permitted to throw on the company the expense of ordering an investigation.

Mr. Allen: Yes, 25 per cent. is a substantial proportion.

A question from Mr. Russell Kettle elicited that the Society's view, that in a prospectus the public was entitled to all the important elements of information which would be required by a private investor, did not imply that matters such as details of trading should be disclosed in the prospectus. Asked to comment on the opinion of the Institute of Chartered Accountants that to show a reconciliation between the audited figures and the figures adjusted would be troublesome, Mr. Allen said: "Our view is that inasmuch as the prospectus already gives the profits after adjustments in quite simple figures, it should not be beyond the wit of the accountant to summarise the adjustments. The statement would start with the profits actually earned, and then in summary form, under the normal main headings, show what the profits would be under the new régime. After all, it is something they will have to do when the company has been in operation for a year, and what one is really aiming at is a profit and loss account based on past results, comparable with what the profit and loss account for the first year of trading will show, and much in the same form.

Mr. Kettle: It has been suggested to us that the name of an auditor on a prospectus induces subscriptions, and that his responsibility should not be confined to his report. In practice, do auditors accept any responsibility, *vis-à-vis* the company, in respect of matters dealt with in the prospectus, apart from their report?

Mr. Elliott: No, not in law, but I think that they do examine the prospectus and make criticisms of it to the directors, without taking any responsibility.

Mr. Kettle: In order to remove doubts as to the extent of the auditor's duties and responsibilities, would you agree with the Institute's suggestion that it should be made clear in the Act that the auditor's responsibility is confined to any statements he makes as an expert?

Mr. Elliott: Yes.

Mr. Kettle: Do you know of any practice amongst auditors of receiving fees for allowing their names to go on a prospectus, quite apart from the fees they receive for giving reports?

Mr. Elliott: No.

The Society's witnesses were asked for their views on various suggestions for the improvement of accounts. Among these was a proposal that where the provision for doubtful debts exceeds a certain percentage of the outstanding debts—the figure of 2½ per cent. was mentioned—there should be an obligation to show specifically the amount. Mr. Elliott thought that must be left to the wisdom of the directors. "They know what reserve is necessary. They very often carry a debt for a very long time when it is doubtful, and that might increase the rate above the 2½ per cent. It would be perfectly prudent for them to reserve it in full." Mr. Allen thought that to exempt a company which had, say, only 5 per cent. of its total assets invested in a subsidiary from publishing anything in the nature of consolidated accounts might open the way to abuse. On the suggestion that, in the public interest, accounts should be prepared in a standardised form to provide the Government with information which would be available as a means of influencing and directing the economic policy of the country, Mr. Allen said: "We have decided that any information of that kind should be separately obtained, apart from the accounts as published and as required under the Companies Act. You should not attempt to impose standardisation for a special purpose."

Mr. Kettle asked if the Society had any suggestions to make which would protect the auditor where his independence was threatened. Mr. Allen's reply was: "We did consider in that connection the formation of an audit committee somewhat on the lines, I think, of the Dutch model, but we could not get any measure of agreement on it. The suggestion was that the auditor should report in the first case to an audit committee appointed by the shareholders, and that that audit committee should in its turn report to the shareholders and submit the auditor's report to them as well, but we could not get any general measure of agreement on it, so we dropped the proposition."

Professor Goodhart enquired whether it would be possible to give power to the Board of Trade to alter the requirements of accounting practice from time to time rather than wait in each case for a statute; in other words, if there is an improvement in accountancy, give the Board of Trade the power to require the accounts to be presented in that form. Mr. Allen's answer was: "It would be possible, but personally I should deplore further legislation by order, and departmental order at that!"

Mr. Geoffrey Heyworth asked whether there would be any advantage in an auditor having to certify that a company had made all the statutory returns required up to the date of the certificate. Mr. Allen replied that the obligations upon companies were rather multifarious at the present time, and looked like continuing; he did not see why the auditor, who takes no part in the conduct of a company's affairs, should be required to certify that it has done what it should under all sorts of requirements.

Mr. Heyworth: Would it be an onerous duty?

Mr. Allen: It would be a nuisance, and something which, I think, the auditor could not fairly be called upon to accept.

Mr. Elliott: If the directors take upon themselves the responsibility of the company, they should take the full responsibility of carrying out their duties properly without being prompted thereto by the auditor.

Mr. Allen: It would probably mean, too, a further risk of charges of negligence being made against the auditor, to which I do not think that he should be required to expose himself.

Mr. Heyworth then put the question whether, if it were considered desirable that the total remuneration of directors should be exposed, whether they are managing directors or not, that should apply also to such things as expenses. This was Mr. Allen's comment: If you require disclosure of all forms of benefits and receipts, you get into difficulty about expenses allowances which may be on the generous side, and privileges of one kind and another which you have to express in terms of money. A man may be required to live in a house near the works; it may be a large house in which he would not dream of living unless it were near the works. He has the benefit of living free of rent, if you like to put it so, with lighting and heating and rent and so forth paid for him, but the total of these may be a sum entirely out of proportion to his domestic requirements, and so the total of his emoluments and benefits might seem large, but in fact his enjoyment from them would be less than appeared." Finally, Mr. A. F. B. Fforde returned to the meaning of the auditors' certificate.

Mr. Fforde: The Act says that proper books of account are to be kept. Is it not a fair conception of the duty of the auditors that they should see that that is done?

Mr. Allen: Yes.

Mr. Elliott: I think it inherent in the certificate. I do not see how he can verify the accounts unless the books have been kept properly.

Mr. Fforde: Meaning proper to the problems of that business?

Mr. Allen: Yes.

Mr. Elliott: Of that particular business.

Mr. Fforde: Therefore, if one reimposed that in the statute and required the auditors to certify that the books kept are proper to the problems of the business in question, you would strengthen the accountant?

Mr. Allen: Yes.

Mr. Elliott: Yes, I think you would help him.

Mr. Fforde went on to ask if it would be fair to require the auditor to certify that the balance sheet and account are in accordance with the best applicable to a business of that kind. On Mr. Elliott replying that what was the best practice was a matter of opinion, he suggested that in order to help flexibility, it was necessary from the legislative point of view to see that pressure is maintained on the directors and officials, and also on the accountants concerned. Mr. Allen then made this point: "If you are going to do anything of that kind, your form of words must be so vague and so much . . . a matter of interpretation in the light of opinion that it would be very difficult to interpret it so as to establish that there was any lapse from the standard which you are seeking to set." Later, he had this to say: "We find ourselves in the difficulty that, if something more is to be laid down in the Act, will it achieve the purpose which you and we ourselves have in mind without being so particular that there will be the danger that the minimum which has to be specified will become the maximum, and that there would not be the goodwill and desire for improvement which we both think is very essential."

Summary of Minutes of Evidence—VIII

Chartered Institute of Patent Agents

On the sixteenth sitting day evidence was given on behalf of the Chartered Institute of Patent Agents. Mr. Arthur Abbey summed up the Institute's suggestions by saying that in the registration of new company names, reference should be made to the Registrar of Trade Marks; that all applications for names of companies should be advertised so as to give the owner of an unregistered trade mark an opportunity of notifying his objections; and that a special tribunal should be able to rectify the company register.

Sir Edward Hodgson made the point that there are at present some 34 different classes in which trade marks can be registered, and that even within these classes there may be sub-divisions in which it is possible for the same mark to be registered by different proprietors. He suggested that to work the Institute's scheme effectively, it would be necessary to issue a classification of companies to correspond with the classification of trade marks in order that the trade mark proprietor might know whether or not he was entitled to object to a proposed name. Mr. E. W. Moss admitted: "Quite frankly, I do not think we had thought of that."

Sir Edward referred to the latitude with which a company's memorandum is generally drawn, and suggested that at one date one class of registered trade mark owner would have the right to object, "and at a later date you might find a second class or a third, or up to 34 different classes." Mr. Moss admitted that effective collaboration between the Registrar of Companies and the Registrar of Trade Marks would go "quite a way" to remedying the present position. Asked whether there were many cases where people had deliberately selected for a company a particular name which had already been registered as a trade mark, Mr. W. P. Williams replied: "Nearly always it is done innocently."

"The Economist"

Members of the staff of *The Economist* gave evidence next. The editor, Mr. Geoffrey Crowther, agreed that the great majority of companies are certainly honestly conducted. Asked whether he appreciated that there were many loopholes in the way of ascertaining beneficial ownership, Mr. Crowther said: "I am sure there are loopholes. I am told that a clever man can always find a way of dodging income tax, but that is no argument for not attempting to stop the loopholes." He did not consider a Board of Trade enquiry as a satisfactory alternative to complete disclosure, remarking that "our past experience is that it is very difficult to get these enquiries pursued to a conclusion." Questioned about the contention that standardised forms of accounts would provide information valuable to the Government in its direction of public policy, Mr. Crowther said he was thinking in terms of a score of alternative forms of accounts rather than several hundred. It might be necessary to have separate forms for manufacturing companies and trading companies.

Mr. F. W. Forge agreed that the form in which the accounts of some companies is published has improved a great deal in the last ten years; but he contended that the amount of information which has been made available to shareholders over the whole field has decreased from the fact that there has been an increase in holding companies, and so on, and lack of disclosure of certain essential figures. Asked whether standardisation would not have a tendency so to compress information as to prevent directors' initiative in giving much more than they otherwise would, he replied: "My idea of standardisation is very largely a standardisation only of main headings at one end, and standardisation of the meaning of words, so far as that is obtainable, at the other."

Mr. R. E. Bird, dealing with the independence of auditors, suggested that if on good and sufficient grounds an auditor found it incompatible with his duty to the shareholders, and incompatible with his responsibilities under the Companies Act, to follow a particular course suggested to him by the directors of the company, then it should be possible for him to resign, and for no other firm of auditors to be appointed in his stead. The question was put to him: "Would you think that much of the cause of dispute between directors and auditors would go if we could legislate so that accounts should effectively disclose the financial position and results of companies?" His answer was: "I should have thought that a director would have less opportunity for saying to an auditor that a particular course should not be followed if the auditor could point to the fact that he was statutorily required to follow that course."

National Chamber of Trade

Mr. D. B. Morgan, giving evidence on behalf of the National Chamber of Trade, was asked whether he thought that access to the accounts of private companies would assist creditors and prospective creditors in deciding whether to give credit. He did not think it would be of material assistance. Asked what damage he thought a company would suffer if it did have to file its statement of accounts, he contended that this would be the negation of the principle of a private company, and that competitors would obtain information which might be to their advantage.

The Chamber's memorandum suggested that as a means of checking long-firm frauds, the Board of Trade should refuse registration to persons who had been previously associated with a company whose dealings and actions had indicated that they were not *bona fide* and honest traders. Mr. Morgan admitted that the suggestion was weak from the point of view that such people as a rule camouflaged themselves pretty thoroughly. It was put to him that it was at least as undesirable in the case of a private company as in the case of a public company that a partner or an employee of an officer of the company should be appointed auditor. "Speaking personally," he said, "I see no objection and everything in favour" of the removal of the exemption. He also thought that if an auditor of a private company had to have professional qualifications, that would be a protection against fraud.

THE PROFESSIONAL CLASSES AID COUNCIL

The twenty-third annual report of the Professional Classes Aid Council deplores the death of the Hon. George Colville, who was Chairman of the Council and of the Executive Committee, as well as Honorary Treasurer.

The scale of relief has had to be restricted, but the financial position still causes concern. The Council appeals for continued and, if possible, increased support. During the year £11,437 was expended on relief, the largest items being £5,201 on education, £1,833 on training, and £2,430 on general help. A number of persons, including many whose applications were outside the scope of the Council's work, were advised of appropriate sources of help. The general policy of the Council is to avoid doles—to see professional men and women through their difficulties, and to set them on their feet.

TAXATION The Finance Act, 1944 and E.P.T.

The provisions of the Finance Act have already been dealt with in the June and July issues of ACCOUNTANCY, and there is no need to recapitulate them here. It is proposed, therefore, to confine this article to a discussion of the provisions affecting excess profits tax, which are of considerable importance to taxpayers and their accountants.

Increased Standards

The increase in standard profits operates in all cases except where the standard profits are ascertained otherwise than by reference to the profits of the standard period. It therefore applies to minimum standards, percentage of capital standards, and substituted standards. The increase is £1,000, increased where the standard is fixed by reference to working proprietors, by a further £500 if there are three, and £1,000 if there are four working proprietors.

It operates from April 1, 1944, and if the chargeable accounting period overlaps that date, it is necessary to compute the liability first as if the old standard applied, and take the proportion to March 31, 1944, then as if the new standard applied, and take the proportion from April 1, 1944.

Many businesses that were just in, or just about to come into liability to E.P.T., will now be outside it, with a great saving in time for tax offices. The increase also gives smaller businesses a much needed margin of profit.

A point of supreme importance is that any deficiency arising as a result of the increase cannot be set against excesses prior to April 1, 1944, but is available against future excesses.

In the case of a group of companies, the increase does not apply to any member of the group except the principal company, and will not apply if the group standard profits are ascertained by aggregating the profits and losses in the standard period of all members other than new subsidiaries, or if the standard profits of any new subsidiary are ascertained by reference to the profits of its standard period.

Illustration.—Minimum standard, three working proprietors, one of whom is admitted to be entitled to maximum standard.

Old Standard, 2×£1,500+£2,500 = ...	£5,500
Add 6 per cent. on excess of average capital employed over £5,000 per working proprietor (2 per cent. in case of borrowed money) ... ... say	800
Old minimum	6,300
Increase as from April 1, 1944	1,500
New minimum	7,800
Profits of the C.A.P., year to August 31, 1944	£7,000
Standard (old)	6,300
Excess profits	700
Proportion to March 31, 1944, 7/12 × £700 =	£408 6s. 8d.
Profits of C.A.P.	£7,000
Standard (new)	7,800
Deficiency	800
Proportion from April 1, 1944, 5/12 × £800 =	£333 6s. 8d.

This deficiency cannot be set against the excess of £408 6s. 8d., which must be paid. The deficiency can be carried forward.

Tax Avoidance

The hands of the Revenue have been greatly strengthened by the amendment of Section 35, Finance Act, 1941, though the Chancellor of the Exchequer had to bow to the dislike of Parliament to going further than was required to meet the mischief complained of by the Law Officers, viz., transfers of shares and changes in personnel carrying on the business.

Readers will be only too familiar with the many changes in shareholdings that have occurred, and how difficult it was to avoid the suspicion that the effect on E.P.T. was the prime reason for the transaction, though many other plausible stories were advanced. Again, it was sometimes hard to believe that the introduction of sons, daughters, nephews, etc., into the business had not been accelerated by the knowledge that it was a good thing to do for E.P.T. purposes. The writer has had to advise on many cases of both types, and has always asked the client whether he is prepared to state in evidence on appeal that E.P.T. was not the main purpose, but had to admit that, provided the main purpose was other than avoidance of E.P.T., the fact that it resulted in such avoidance was not necessarily fatal to its success in avoiding E.P.T. Accountants will now be in a much happier position to advise clients, freed from the disturbing thought that was always at the back of the mind, viz., that they were really helping avoidance, much as it went against the grain under current conditions.

It may be well to set out the salient features of the Section as amended:

> "Where the Commissioners are of opinion that the main purpose or one of the main purposes for which any transaction or transactions was or were effected (whether before or after the passing of the Act) was the avoidance or reduction of liability to E.P.T., they may direct that adjustments shall be made to counteract the avoidance, etc.
>
> If it appears in the case of any transaction, being a transaction which involves, or transactions one or more of which involve:
>
> (*a*) the transfer or acquisition of shares in a company; or
>
> (*b*) a change or changes in the person or persons carrying on a trade or business or part of a trade or business,
>
> that, having regard to the provisions of the law relating to E.P.T. (other than Section 35 as amended), which were in force at the time when the transaction or transactions was or were effected the main benefit which might have been expected to accrue from the transaction(s) during the currency of E.P.T. was avoidance or reduction in liability to the tax, avoidance shall be deemed for the purposes of Section 35 to have been the main purpose or one of the main purposes of the transaction(s).

It will be seen that there is nothing in the section to prevent anyone doing whatever he likes. So far as E.P.T. is concerned, however, his apparent motive must be sought out, and if avoidance of E.P.T. is a prime consideration, the Commissioners are entitled to ignore the transaction, and charge E.P.T. as if the *status quo* existed.

Hitherto, a taxpayer could go to the Special Commissioners on appeal and say, e.g., "It is true that I knew that what I was doing would save me E.P.T.; that, however, was not my main reason for doing it, which was to give my child a stake in the business, and groom him up to take my place in due course." Now, the avoidance of E.P.T. can be regarded as one of the

main reasons, and the Section applied. Those who have succeeded in appeals will not be affected for any C.A.P. ended before April 1, 1944, but can be caught thereafter.

While the Revenue are occasionally a little too "hot" in applying the section, a taxpayer with a good case can dig his heels in and fight. It is important to remember the right of appeal to the Special Commissioners, which may be on any of the following grounds:

(1) That the avoidance or reduction in liability to E.P.T. was not a main purpose; or

(2) That no direction ought to have been given; or

(3) That the adjustments directed to be made are inappropriate.

On Section 35, as with Section 32, Finance Act, 1940, individual Inspectors of Taxes sometimes try to argue on matters outside the section; it is very necessary to insist in such cases on the wording of the Acts and keep to the point.

Some clients are inclined to complain when their bright ideas do not succeed in saving their pockets; it is necessary to impress on them that the purpose of Section 35, as amended, is not to get more tax from them than if they had not carried out the transaction, but to get the same amount. A father can bring a son into the business and give him a stake in it without making that stake just enough to qualify him as a working proprietor.

The increase in the minimum standard already referred to may soften the blow in some cases.

Taxation Notes

Allowances and Non-Residents

While a person resident in the United Kingdom is entitled to all allowances appropriate to his circumstances, a non-resident is not entitled to any unless he is a British subject, an employee or ex-employee of the Crown, etc., as set out in Section 24, Finance Act, 1920. Under that section, the individual's liability to tax is such proportion of the tax he would pay if his total income were liable, that the income liable in the U.K. bears to such total income. Dominion Income Tax Relief is not to be taken into account in the computation.

Illustration:

		£	Tax £ s. d.
Foreign Income, earned ...		1,800	
Foreign Income, unearned ...		300	
3½ per cent. War Loan and 3 per cent. Defence Bonds Interest		380	
		2,480	
Less Annual payments outside U.K.		80	
Income not liable in U.K. ...		2,400	
Income in U.K.:			
Houses let, N.A.V....	700		350 0 0
Do., Excess Rents ...	100		
Dividends	1,800		900 0 0
	2,600		
Less Bank Interest	60		
Income liable in U.K....		2,540	
Total Income ...		4,940	1,250 0 0
Allowances:			
Earned	150		
Personal	140		
Children	100		
		390	
		£4,550	
£165 at 6s. 6d. ...	£53 12 6		
£4,385 at 10s. ...	2,192 10 0		
	2,246 2 6		
Less Life Assurance Relief—£200 at 3s. 6d.	35 0 0		
	£2,211 2 6		

Proportionate liability:

$$\frac{2,540}{4,940} \times £2,211\ 2\ 6 = 1,136\ 17\ 11$$

Tax repayable ...	£113 2 1

The effect, of course, is to give proportionate allowances, thus:

Earned, etc., as above, £390 at 10s....	£195	0 0
Reduced Rate, £165 at 3s. 6d. ...	28	17 6
Life Assurance	35	0 0
	£258	17 6

$$\frac{2,540}{4,940} \times £258\ 17s.\ 6d. = £133\ 2\ 1$$

Deduct Excess Rents (Case VI)	£100	
Less Bank Interest ...	60	
(at 10s.) ...	£40	20 0 0
Tax payable		£113 2 1

Surtax is payable on the income liable in the U.K., £2,540, *i.e.*, £500 at 2s. and £40 at 2s. 3d.=£54 10s. 0d.

Schedule A

In these days of depleted staffs and pressure of work, it is found that, in many instances, the Schedule A tax is not adjusted between vendor and purchaser in the completion statement. The purchaser should see that this is always done, otherwise he may find himself liable for a period prior to purchase. It is only where the occupier prior to the sale was a beneficial owner that the tax cannot be levied upon the new occupier (Sch. A, No. VII, R.3).

D.I.T.—Palestine

An amendment has been made to the Palestinian Income Tax Ordinance which is so different from the usual enactments in that country that it points to a draftsman used to United Kingdom taxation. It provides that where the tax payable in Palestine, plus that payable in the U.K. after Dominion income tax relief has been granted, exceeds the gross Palestine and U.K. taxes combined (*i.e.*, before deducting reliefs for double taxation), the Commissioner, if satisfied that hardship would otherwise be caused, may grant additional relief up to an amount sufficient to reduce the net

tax payable in Palestine to an amount which, when added to the net U.K. tax, will equal the greater of the gross Palestine or the gross U.K. tax. If such a reciprocal arrangement could be made in all parts of the Empire, it would ensure that there was never double taxation within the Empire, the two countries involved collecting between them an amount equal to the tax applicable in whichever had the higher rates.

N.D.C.

The incidence of E.P.T. makes N.D.C. so rare that memories may become rusty. The following *pro forma* computations may therefore be useful :

Director-controlled Companies :	£	£
Profits as for Income Tax (before deducting N.D.C.)	18,000	7,000
Add Net Annual Value	300	200
Directors' Remuneration ...	5,000	3,000
	23,300	10,200
Deduct : Debenture Interest 1,000		800
Ground Rent ... 60	1,060	
	22,240	9,400
Directors' Remuneration, 15 per cent.	3,336	1,500
	18,904	7,900
Abatement $\frac{12,000-7,900}{5}$		820
		7,080
N.D.C., 5 per cent.,	£945 4s. 0d.	£354

Annuities and Estate Duty

Where the deceased purchased annuities so that they pass on his death, a single annuity not exceeding £52, or the first of two or more such annuities, is not deemed to pass on the death. If the annuity exceeds £52, but is less than £104, marginal relief is given : it is charged to duty as if it amounted to twice the excess of the annuity over £52. For example, an annuity of £78 is charged on the capitalised value of 2 (£78—52) = £52. If the deceased purchased annuities for two or more different persons, each can claim the relief.

P.A.Y.E. and Directors' Drawings

A correspondent reports a very interesting method of resolving this knotty problem which he has agreed with the local Income Tax (Employments) Officer. The directors of his company have by resolution at a properly convened meeting fixed the salaries for the year to December 31, 1944, with a proviso that, if the trading results justify it, a bonus will be voted. The salary is paid at the end of each quarter (June 30, etc.), with permission to draw on account. Tax under P.A.Y.E. is deducted on the accumulated total salary at the end of each quarter, irrespective of the actual drawings, any balance due to or from a director after comparing drawings and tax with the fixed salary being adjusted *pro tem.* as a variation of existing loan accounts.

At the end of the financial year, there will be a final settlement of salary, drawings, and tax, it being understood that drawings must not exceed the finally agreed amount of salary.

Example—Code 23. Salary fixed at £500.

Quarter to : 1944	Salary	Drawn	Tax
	£	£	£ s. d.
June 30	125	100	31 10 0
September 30	125	130	31 11 0
	250	230	63 1 0
December 31	125	135	31 10 0
	375	365	94 11 0
March 31, 1945 ...	125	—	121 11 0
Bonus	200	335	
	£700	£700	£216 2 0

The correspondent does not mention the point, but it will be advisable in such a case to agree to the bonus being assessed as if the financial year were co-terminous with the year of assessment.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

Schedule D—Trade—Appellants directors and virtually sole shareholders of building company—Purchases of land by appellants on personal account—Erection of houses thereon by company—Grants of long leases to tenants subject to ground rents—Consideration for grant of leases raised by building society mortgages and paid over to company—Lands purchased for development scheduled under Town Planning Acts as open spaces—Sale to local authority at profit—Losses of appellants in financing company for manufacturing celluloid film—Sales of ground rents to provide funds to meet bank overdrafts created in connection with film company—Whether carrying on trade—If so, whether losses in film business deductible as trading losses.

In *Laver* v. *Wilkinson* (K.B.D., April 4, 1944, T.R. 109), the Special Commissioners had rejected the appellants' contention that they had acquired the lands for investment, and that, where leases had been granted, they had intended to retain the reversions expectant upon their determination. The Special Commissioners had refused to allow the loss upon the film business as a trading loss of the appellants. Macnaghten, J., upheld their decision as findings of fact supported by ample evidence. He held that the motives which induced the appellants to sell the ground rents were immaterial.

The case illustrates once more the fact that where there is found to have been an original trading intention, it is very difficult to escape paying tax upon resultant profits, however they arise.

Schedule D—Trade—Builders—Purchases of land and erection of houses thereon—Houses leased in consideration of premiums and ground rents—Where land purchased freehold, leases granted for terms of not less than 900 years—Where land acquired leasehold, under-leases granted—Whether ground rents, or improved ground rents, to be taken into account in computing profits and, if so, upon what basis.

The main difference between the case of *Heather* v. *A. Redfern and Sons* (K.B.D., April 4, 1944, T.R. 113) and *B. G. Utting and Co., Ltd.* v. *Hughes* (1940, A.C., 463, 23 T.C. 174) was that whilst in *Utting* they were for 99 years, in the present case they were for not less than 900 years. The General Commissioners had found in favour of the respondents ; but this was reversed by

Macnaghten, J., who held that they had misinterpreted the *Utting* decision. The unsold ground rents had to be brought in at cost or market value, whichever was the less, and cost was to be measured—as agreed between the parties—upon the basis laid down in *John Emery and Sons* v. *C.I.R.* (1937, A.C. 91, 20 T.C. 213).

Schedule D—Authoress assessed under Case II—Agreement with publishers to print and publish novels upon basis of royalties—Subsequent agreement whereby as regards three novels lump sum substituted for royalties—Rights so sold cover whole term of copyright—Whether lump sum a receipt of profession.

In *Glasson* v. *Rougier* (K.B.D., March 29, 1944, T.R. 93), the General Commissioners had found that the lump sum in question was not income. Macnaghten, J., reversed their decision. He held that it was part of respondent's wife's profits or emoluments derived by her from following the vocation of authoress, and distinguished the case from *Beare* v. *Carter* (1940, 2 K.B. 187, 23 T.C. 353), upon the ground that Dr. Carter had not been carrying on any profession or vocation within Case II, but had been assessed under Case VI in respect of a sum received for an edition " of the one and only book he had ever written." A statement to this effect appeared in the Commissioners' Case; and *Beare* v. *Carter* will always be in law a " one book " case. The curious thing, however, is that everyone should have forgotten or been ignorant of Dr. Carter's " Elements of Contract " (Sweet and Maxwell), a small " classic " on the subject.

Sur-tax—Covenant with bank to make payments to charities—Bank not obliged to take action to enforce payment of covenanted sums—Sums paid smaller than covenanted—Whether full sums deductible for sur-tax purposes—I.T. Act, 1918, Section 27 (1) (b), F.A., 1927, Section 38.

In *Sinclair* v. *C.I.R.* (K.B.D., October 19, 1943 (1944) T.R. 103), the covenant was for £2,500 net; but in 1940-1 only £1,500 was paid. Following *Lee* v. *C.I.R.* (1943, T.R. 75), noted in our February 1944 issue, it was conceded that only the smaller amount was deductible in computing the settlor's sur-tax liability.

Sur-tax—Disposition of income in favour of child—Power of appointment—Child's interest, reducible if other children born—Whether child's benefit for a period less than its life—F.A., 1922, Section 20 (1) (c).

The case of *Mauroy* v. *C.I.R.* (C.A., April 4, 1944, T.R. 97) was noted in our issue of November, 1943. The Court of Appeal has unanimously affirmed the decision of Macnaghten, J., who had not given a reasoned judgment. Lord Greene and Luxmoore, L.J., gave a joint judgment with which Mackinnon, L.J., agreed. Leave to appeal to the Lords was given on terms.

The decision is an important one, and means a reversal of the previous Revenue practice. In the present writer's opinion, the weakness of the Crown's position was brought out in the following words from the judgment:

> " Whether the income would or would not continue to be payable to or applicable for the benefit of Joan for the whole of the rest of her life depended on quite unpredictable events. All that could be said of it was that the income might or might not continue to be so applicable according to circumstances. This, however, is not sufficient to discharge the burden imposed upon the Crown by the section, which is to establish affirmatively that the income is—not that it may be—payable or applicable for some period less than the life of the child. In applying the section what has to be considered is the effect of the settlement in the light of circumstances as they exist at the relevant time."

i.e., the period under consideration.

The decision was said to be consistent with *Watson's Trustees* v. *Wiggins* ((1934) A.C., 264, 17 T.C. 728).

Sur-tax—Undistributed income of company—Apportionment—£42,000 settled in 1929 upon three children—To be invested by trustees in trustee securities or any investment whatever specifically approved by settlor—Appellant company formed in 1925—No business or assets except 2s. subscribed capital when whole of trust fund invested in shares of company—Subsequent acquisition by company of valuable investments—Capital re-arrangement of appellant company whereby settlor secured absolute control—Loans made by company to settlor—Whether the power to borrow from company enabled settlor to secure benefit of income or assets of the company—F.A., 1922, Section 21—F.A., 1936, Section 20 (1)—F.A., 1939, Section 15.

In *Haddon Court House, Ltd.* v. *C.I.R.* (K.B.D., April 4, 1944, T.R. 105), the Special Commissioners had decided that the settlor as holder of the founder's shares of the company was able to secure, for the purposes of Section 15 of F.A., 1939, that income or assets of the company should be applied for his benefit to a greater extent than his relevant interests in the company, and had apportioned to him the whole of its income. Macnaghten, J., discharged the apportionments in view of the judgments in the Court of Appeal in *C.I.R.* v. *L.B. (Holdings) Ltd.* (1944, 1 All E.R. 308, T.R. 9) and *Clark and the Langrange Trust and Investment Co., Ltd.* v. *C.I.R.* (1944, T.R. 21), noted in our issue of April 1944. He said that there was no evidence that the settlor would not be able to repay to the company any money borrowed from it; and it could not be assumed that he would do anything which would amount to a criminal offence.

It is obvious that the Revenue cannot avoid a reconsideration of its legal position in regard to sur-tax avoidance.

EXTRA-STATUTORY TAX CONCESSIONS

In the House of Commons on July 6, 1944:

COMMANDER GALBRAITH asked the Chancellor of the Exchequer if he will make a statement as to any decision he has reached on the question of making available to the public a record of the extra-statutory concessions granted by the Board of Inland Revenue in relation to income tax, national defence contribution, and excess profits tax.

SIR JOHN ANDERSON: In accordance with the promise I gave my hon. and gallant Friend in the course of the Finance Bill Debates, I have considered this matter very carefully, and, while I believe that the extra-statutory concessions which the Board of Inland Revenue have made under war-time conditions are for the most part widely known to those concerned, either through announcement in this House or through other channels, I appreciate the force of the case for making available some compendious record of them. I have decided, therefore, to arrange for the publication of a White Paper, setting out the various heads of concession, together with a brief indication of their nature and the circumstances in which they are available, which will, I hope, adequately meet the case.

COMMANDER GALBRAITH: May I thank my right hon. Friend for that reply?

FINANCE

The Month in the City

Effect of the Flying Bomb

No one who had merely watched the behaviour of Stock Exchange prices over past weeks could have guessed that "Southern England" usually meant "London," or that the Stock Exchange was always shut during an alert. The volume of dealings, it is true, has been considerably more revealing on occasions. There has often been little opportunity to mark bargains, and the closing of the Stock Exchange during air raids, owing to danger from the glass roof, has made it difficult to transact business. Members have been driven either to return to their offices and carry on by telephone, or to congregate in the street. The fact that prices, particularly in the Industrial market, have continued to advance in spite of all this, is a tribute to the City's confidence in the temporary and ineffective character of the new attacks. What has, in fact, had far more influence on the trend of prices has been the striking series of military successes on the East, West, and South of Germany. The effect of these successes has been to bring in more buyers of shares which are regarded as having good post-war prospects. Building, stores, textile, and heavy industrial shares have been among the specially favoured, while the more speculative buyer has been engaged in picking up some of the small supply of European bonds.

Stock Exchange Transition

In September the proprietors of the Stock Exchange will be asked to approve arrangements for what may be called the transitional government of that institution. At a time when one-third of the proprietors are away on service, it has been thought inappropriate to secure the complete fusion of members' and proprietors' interests. Instead, it is proposed to put into effect for the time being a system of government which will make dual control less obvious without abolishing it. Ultimately a more radical alternative to the present Deed of Settlement will have to be discovered, and the report of the Consultative Committee remarks that incorporation by Royal Charter would have "a number of advantages." For the interim period it is recommended that the Board of Trustees and Managers, representing the proprietors, and the Committee for General Purposes, representing the members, should act jointly on a new body, called the Council of the Stock Exchange. Through the chairman of this body, the Stock Exchange will at last be able to speak with one voice, but in the constitution of the Council itself, the old division of interests between members and proprietors has had to be preserved. Thus, the Council will consist of 39 persons initially, of whom nine will be the trustees and managers (termed "foundation members") and the remaining 30 will be ordinary members elected for three years, one-third of their number retiring each year. In addition, there will be a Property and Finance Committee, consisting of the nine trustees and managers and three ordinary members. It will be seen that this arrangement preserves the existing dichotomy between administration and finance. On the Council, which decides about the former, the successors of the Committee for General Purposes will have a permanent majority. On the Property and Finance Committee the representatives of the Trustees and Managers will remain in control. At the same time, the new arrangements may be regarded as a decisive step in the right direction. Under present circumstances more could hardly have been expected, and experience of joint working should prepare the representatives of both members and proprietors for closer co-operation in due course. What form the final constitution will take remains to be seen, but it is likely that some statutory recognition will ultimately be sought, and that it will be combined with the setting up of some minimum technical requirements for membership.

Railway Problems

There have been fresh examples recently of how dependent on political events are the hopes and fears of railway stockholders. In the home railway sphere there has been some disappointment, but very little surprise, that the Government has refused to revise the Railway Control Agreement. Lord Leathers would not admit that the extension of the war gave grounds for revision, and pointed out that the existing agreement made allowance for abnormal wear and tear. This leaves matters as they are until at least a year after the close of hostilities. About the position thereafter there is plenty of scope for uncertainty. Will the railways be nationalised, or "co-ordinated" with other forms of transport, or will they be permitted to work on a remunerative basis by means of a substantial increase in charges? Equally dependent on political circumstances are the prospects for Argentine railway stockholders, and in this case it appears that further developments are to be expected. After their abortive visit to Buenos Aires last year, Argentine railway directors are to pay another visit shortly. Discussions have been held with the Foreign Office, and the indications are that greater official support will be forthcoming in the new negotiations. The precise object of these negotiations has not been divulged. On the British side there has been no indication that anything beyond a "square deal" in the form of a more favourable exchange rate and higher railway charges is contemplated. In Buenos Aires, however, there has been considerable discussion of the possibility of repatriating and nationalising the railways. At the end of last year Argentina had £44 million of sterling balances and £230 million of gold and foreign exchange altogether. Cash could be supplementary to payment in the form of Argentine State bonds.

Fair Compensation

A principle of no small importance to investors arises in connection with the Government's proposals for the use of land, embodied in the Town and Country Planning Bill and the White Paper on the Control of Land Use. The intention is that compensation for publicly acquired land should be payable on the basis of values as at March 31, 1939. If this becomes law, it will constitute an unfair discrimination against one class of property-owner. The fall in the value of money alone requires that some adjustment should be made, and it would surely have been possible to do so while still preventing undesirable speculation in land needed for public purposes. As it is, landowners will get considerably less in *purchasing power* than they would have done in 1939, and if the local authorities had their way, they would be made to suffer still more severely. The idea of the local authorities is to have it both ways, and purchase land at March, 1939, values or the market price, whichever is the lower. This is so obviously inequitable as to require little refutation, but the Government's plan is bad enough. By contrast it may be recalled that securities requisitioned during the war have been purchased at market prices. This, with safeguards against land speculation, is the principle which should apply to all types of property. It would be a bad day for investors in securities if March, 1939, values were ever made to apply to them.

The President at Bradford and Manchester

Mr. Richard A. Witty, President of the Society of Incorporated Accountants, visited the District Societies of Bradford and Manchester on July 4.

Bradford

In honour of Mr. Witty's visit, a luncheon arranged by the Incorporated Accountants' Bradford and District Society was held at the Great Northern Hotel, Bradford, under the chairmanship of Mr. Charles E. Claridge, President of the District Society. The company included the Lord Mayor of Bradford (Ald. W. H. Barraclough), Sir Herbert Holdsworth, M.P., Mr. E. V. Heaton (President, Bradford Chamber of Commerce), Mr. H. M. Dawson (President, Bradford Law Society), Mr. J. N. Garside (President, Bradford Institute of Bankers), Mr. R. E. Starkie and Mr. Percy Toothill (members of the Council of the Society of Incorporated Accountants), Mr. H. R. Dickinson (President, Leeds and Bradford Society of Chartered Accountants), Mr. G. A. Windsor (President, Yorkshire District Society of Incorporated Accountants), and Mr. J. R. Bonner (Inspector of Taxes, Bradford).

Introducing Mr. Witty, the Chairman said he had given the greatest satisfaction to the Bradford members in his office as President of the Society.

Mr. Richard A. Witty (President, Society of Incorporated Accountants) referred to the steps which were being taken to assist qualified members on their return to professional life, students whose training had been interrupted by their national service, and new students who desired to enter the accountancy profession after demobilisation. In all three cases the Council of the Society were anxious and willing to render every possible assistance, but they would not be prepared, of course, to admit new entrants to membership of the Society until after they had received practical training within the profession, and had proved their competence by passing the necessary examinations. In the interests of the men themselves, it would be folly to debase the qualification of Incorporated Accountant.

In a reference to the Finance Bill then before Parliament, Mr. Witty drew attention to the proposals in relation to increased standards for E.P.T., and for an adjustment of income tax in the post-war period. The great importance of these proposals lay in the recognition by the Revenue authorities of the fact that there had been hitherto too wide a gap between the meaning of income or profit from a commercial point of view and the meaning from the taxation point of view. It might be reasonably expected that in the future there would be a closer liaison between commerce and the accountancy bodies on the one hand, and the Revenue authorities on the other, although it would be too much to expect that the business community would receive all the concessions to which they considered themselves entitled.

The Lord Mayor, replying to a toast of "The City of Bradford," proposed by Mr. A. N. Buckley (Vice-President of the Bradford Society), urged the necessity for giving individuality in commerce its freedom. He had a great admiration for civil servants, but the stability of the nation had been built up on individual enterprise. Once that was stifled we were on dangerous ground. If men were trusted, they would reciprocate that trust. That was the spirit that should animate the future of the City of Bradford and its relationship to authority. We could not have everything as we would like after four or five years of war, but if we gave initiative and personality its chance, and let a man step into the arena of industrial life and do the best for himself, the result would be far more beneficial to the country than continued restrictions which would only stifle enterprise.

Manchester

On the same day Mr. Witty was the guest of the Incorporated Accountants' Society of Manchester and District at a dinner held in the Midland Hotel, Manchester. Mr. Alfred Southern presided.

Sir John Bennett (Vice-Chancellor of the County Palatine of Lancaster), who proposed the toast of the Society of Incorporated Accountants, said that such organisations served a most useful purpose by maintaining standards of conduct which enabled the public to put the trust and confidence in professional men which otherwise they might not feel able to do. In the Chancery Court they saw a great deal of the Society's members, and he would like to take the opportunity of thanking them all for their very efficient help in all kinds of cases.

Mr. Richard A. Witty (President of the Society of Incorporated Accountants) said he wished to give an assurance that post-war problems relating to their members who had been called to national service would receive most careful consideration. They had also given very special care to the question of those students who would on demobilisation desire to continue or to enter the accountancy profession. They would be dealt with in a broad and sympathetic manner, but the Council felt that there might be a danger if they allowed their sympathy to run to a misguided extent, that these students might be admitted to the Society before they were fully qualified to carry out the many duties and responsibilities that fell upon the profession.

Turning to the question of the co-ordination of the accountancy profession, Mr. Witty said that the President of the Institute of Chartered Accountants, and he himself as President of the Society of Incorporated Accountants, had said at their annual meetings that if it were not possible to get full co-ordination, they might be able to arrange for a joint committee of the two bodies with a view to carrying out co-ordination on a voluntary basis. They did not intend to convey that the whole negotiations for co-ordination had failed: They had definitely not failed. They would go on, and he said with a full sense of responsibility that they would continue until co-ordination was achieved. They would achieve it. The reasons for co-ordination were well enough known. They wanted the profession to be able to speak with one voice when they talked with Government Departments. They wanted to be able to speak with one voice when they talked to their educational friends.

At the present time they were engaged in active negotiations with a committee of the Vice-Chancellors of the Universities of this country to see how far it was practical to incorporate a university training with training for the accountancy profession. It would be of a voluntary nature, but they believed it would tend to draw to the profession those who had had the benefit of a university education. At the back of their minds there was the desire that accountancy should be recognised by everybody as one of the learned professions.

Dealing with income tax problems in the post-war period, Mr. Witty said that it would, perhaps, be too much to expect that the business community would receive full satisfaction on every point, but the proposals in this year's Budget speech for income tax adjustments after the war were a significant acknow-

ledgment by the Chancellor of the Exchequer that hitherto there had been too wide a gap between the two conceptions of income or profits—that was to say, the commercial point of view and the taxation point of view. There was to be a special initial allowance on the cost of new plant and machinery, and the cost of buildings would be more generously treated. A continuing business would receive the obsolescence allowance in respect of plant and machinery which were scrapped, even if the particular items were not replaced. Other items of expenses would become chargeable, notably amounts expended on scientific research. All traders would derive great benefit when these proposals were brought into effect. They were of special importance to manufacturers owning large plants.

It was common knowledge in the profession, he thought, that the Chancellor of the Exchequer and the Board of Inland Revenue were definitely in touch with one another, and that commerce and the accountancy profession were continually consulted to find out what their views were, and in order that views which might have been expressed in vague form could be more clearly defined and perhaps met. He thought this was a very important step in the right direction. The Board of Inland Revenue was necessarily non-committal, but they were all the time trying to find out what the views of commerce were, and always gave the warning: Bring us concrete facts and instances.

Too much, however, should not be expected. They must remember how seven years' work on the Tax Codification Committee appeared to have been wasted. He did not mention this to belittle what the authorities were doing, but only to give warning that it would be unwise to entertain swollen expectations.

He held the view, and it was shared by a great many people, that at the end of this war the prestige of this country was going to be greater than it had ever been before, and our young men and women were going to have opportunities such as they never had before. Most of them knew that the British-trained accountant had occupied a unique position and reputation in other countries. It was known that the British-trained accountant took a more exact view of his profession than was taken in many other countries. He thought, therefore, that the outlook for the accountancy profession was good, and that the younger members of the profession would rise to the opportunities that would present themselves, and enjoy, because of its very magnitude, the task that would lie before them.

Mr. Alfred Southern, F.S.A.A. (President of the Incorporated Accountants' Society of Manchester and District), proposing the toast of "The City and Trade of Manchester and District," said that as accountants they regarded themselves as members of the great commercial team of Manchester. It was their duty and desire to assist and advise their commercial friends on their financial problems and policies. Taxation problems of great magnitude had arisen since the war, affecting not only the business man but his employees; and the accountancy profession had borne a great burden on behalf of the commercial community of this country. Through the joint efforts of the Association of Chambers of Commerce and the leaders of the accountancy profession, many concessions and amendments had been granted. They all hoped that, sooner than they might expect, conditions would become rapidly favourable to individual ingenuity and foresight in the re-establishment of export trade which had for many generations been an extensive proportion of the trade of Manchester and the towns in close proximity. Many of the restrictions imposed had been irksome, but had no doubt been necessary, and he thought they should be removed with all speed consistent with national commercial safety. Commercial plans for reconstruction and expansion must receive the earliest consideration and, indeed, the assistance of the Government in the transitional period to peace-time trade. He was sure they would all agree wholeheartedly with the views recently expressed by Mr. Witty that business and industry had a right to expect an early clarification of the provisions in respect of the excess profits tax refund of 20 per cent. Lack of certainty in this matter was undoubtedly holding up consideration of many of the post-war plans of commerce and industry. As to the future, he would say that the success of our arms had given rise to increased confidence on the part of overseas business houses, as was proved by the ever-increasing inquiries now being received by the Manchester Chamber of Commerce. Manchester and Lancashire looked forward to being in the forefront of the restoration of trade.

The Lord Mayor of Manchester (Alderman L. B. Cox) acknowledged the toast.

LAW Legal Notes

MISCELLANEOUS

Sale of business—Payment out of profits—Deduction of E.P.T.

In *L.C., Ltd.* v. *G. B. Ollivant, Ltd.* (1944, W.N. 105), the House of Lords confirmed the decision of the Court of Appeal (noted in ACCOUNTANCY, December, 1942). The point decided was that in computing their profits for each financial year, the respondents were entitled to deduct any sum paid or payable by them in respect of E.P.T. or National Defence Contribution. Farwell, J., had held they were so entitled. His decision was upheld by the Court of Appeal, and is now confirmed by the House of Lords. The point arose in this way: The appellant company agreed to sell their business, including its goodwill, to the respondent company; £200,000 was to be paid by instalments, to be computed as a sum equal to half the sum which the auditors certified to be the profits of the financial year in respect of such instalment. The important words of the clause, which gave rise to the dispute, were that the auditors were to compute the profits according to the general principles of ordinary commercial practice, but they were entitled to make such adjustments as they thought appropriate to give effect to the principles of the agreement. Losses or profits on the sale of fixed capital assets were to be excluded from the account, and no deduction was to be made for general reserves or for income tax.

Courts will not decide hypothetical cases, but only living issues.

The Courts will not decide cases of a hypothetical nature, where there is no actual conflict between the parties. This rule was exemplified in an appeal to the House of Lords in *Sun Life Assurance Company of Canada* v. *Jervis* (1944, 1 All E.R. 469). In allowing leave to appeal to the House of Lords, the Court of Appeal granted leave on condition that the company undertook to pay the costs as between solicitor and client in the House of Lords in any event, and not to ask for the return of any money ordered to be paid by the order

The House of Lords unanimously held that the effect of the order was to make it a matter of complete indifference to the respondent whether the appellants won or lost, so that there was no live issue to be tried in the appeal. The action was originally brought by the respondent to settle his rights under an endowment policy of life assurance issued to him by the appellants in December, 1929. Before the policy was taken out, the respondent had received from the company a document purporting to describe the benefits he would receive. The Court of Appeal found that that document held out benefits greater than the policy itself provided, wherefore they decided (Luxmoore, J., dissenting) that the policy should be rectified and an additional sum paid to the respondent. From that order, the company obtained leave to appeal to the House of Lords on the terms above stated. Viscount Simon, L.C., said that it would not be a proper exercise of the authority which the House possessed to hear appeals, if it were to take time in deciding an academic question, the answer to which could not affect the respondent in any way. No doubt the company was concerned to get a favourable decision, because it feared that other cases might arise from similar policies when holders would rely on the decision of the Court of Appeal. But if the company wanted to have the view of the House of Lords on the issue, its proper course was to await a further claim, and to bring that claim, if necessary, up to the House of Lords with a party on the record whose interest it was to resist the appeal. Leave was given for the appeal to be withdrawn.

Measure of Damages.

In *Jewelowski* v. *Propp* (1944, 1 All E.R. 483), Lewis, J., decided a novel point arising out of the winding-up of a company. The plaintiff sued the defendant for damages for fraudulent misrepresentations made by the defendant, whereby the plaintiff was induced to advance £1,000 to a company on a debenture. The Court found that he was so induced. The point of difficulty was the measure of damages. The company had been wound up and the plaintiff received £257 16s. 2d. in respect of the debenture. Apart from this, the plaintiff had bought from the receiver the assets of the company for £350 and had subsequently sold them for £950. The question arose whether the £600 profit which the plaintiff had thereby made should be taken into account in assessing the damages to which he was entitled as damages awarded for fraudulent misrepresentation. If it could be so set off, the damages payable would be only £142 3s. 10d., instead of £742 3s. 10d. It was argued for the defendant that it was the plaintiff's duty to minimise the damages, just as, in a case of wrongful dismissal, he must seek employment elsewhere and so reduce the damages claimed. Lewis, J., said the question was difficult and that there appeared to be no reported authority which could assist him in determining it. He decided that the plaintiff was entitled to the full amount of £742 3s. 10d., because the principle that a plaintiff owed a duty to minimise his damages did not extend over the present circumstances. In a claim for damages for fraudulent misrepresentation, the plaintiff was not called upon to expend money on something which might result in reducing his claim.

An Economist's View of Accountants

Summary of a lecture delivered by Dr. H. W. Singer, of the University of Manchester, at a recent joint meeting of the Incorporated Accountants' District Society of Liverpool and the Liverpool Society of Chartered Accountants.

In the view of economists, accountants tend to be somewhat complacent about costing, regarding "Cost" as something absolute. The economist, on the other hand, says that there is no such thing as absolute cost, there being rather a time schedule comparing short and long-term costs—a very different matter. Ignoring the time factor, the accountant stresses the necessity for "Full Cost" to be covered. If this (to the economist) wrong principle could be abandoned and the time element given due weight, trade depression would be avoided, as there would then be no attempt to cover long-term costs in the short run.

A second criticism of the accountant's attitude is that he treats the firm too much as a self-contained unit, without giving sufficient consideration to its relationship to the economic system as a whole. In this his attitude is akin to that of the pure scientist, who is more concerned with the result of his research itself than with the application of that result and its social significance. As a defence, it is held that the accountant must safeguard the interests of the individual firm, but he sometimes forgets that the doings of other firms are of great significance when matters of policy are to be decided, so that a broader view is to be encouraged.

One of the chief clashes between the economist and the accountant takes place in connection with the valuation of stocks, the time-honoured principle of "Cost or replacement, whichever be the lower" being particularly annoying to the economist and the statistician, in that it upsets national income calculations. The idea, too, that money values are fixed is an unfair one, so that the fiscal authorities can hardly be blamed for applying the same principle in E.P.T. The accountant is at the same time too cautious and too extravagant—too cautious in considering profits, and too extravagant in assessing losses. Over-pessimism is a bad principle, and the accountant should show his appreciation of wider issues by modifications in this direction.

The accountant should thus think of a business as a *productive* unit going on continuously and should not base his valuations on break-up prices. If rising prices are to be ignored, why not falling prices also?

It is probable that the "automatic balance" has had a profound influence on the attitude of accountants, and given a false sense of equilibrium. Assets and liabilities cancel out in the view of the accountant, but not in the view of the economist. To an economist, the primary concept is that of profit, and not balance, and accountants might well develop this more modern statistical approach. One can appreciate how such a modification of attitude would help in the consideration of such matters as the relationship between the individual firm and industry, employment and international trade.

With regard to the future of accounting, it seems likely that it will increase in importance after the war, as industry will have a greater need of accountants, due to the development of a new spirit of experimentation—the accountant becoming more than ever the eyes and ears of management. Also with the increased tendency towards State control of monopoly and State direction (*e.g.*, so far as the location of industry is concerned),

the role of the accountant is plain. A new kind of accounting is therefore necessary, and in the future we are likely to see economically-trained accountants and accounting-trained economists.

So far as standard accounting is concerned, if we assume that a state of full employment will exist after the war, and a consequent weakening of the forces of competition, some alternative will be required in order to stimulate industrial efficiency. This is the function of the accountant, who will be relieved of much of his former routine work.

The principal objections which have been levelled against standard accounting are :

1. The need for the use of different methods by different firms. But the use of standard accounts does not prevent a firm from having its own private accounts, and in any case, any disadvantage would be more than compensated by the virtue of comparability.
2. It is mainly of historical interest as the results are arrived at too late to be of practical value. This viewpoint is too pessimistic as such accounts are not used for any direct financial purpose, and do not need auditing, and quick working could be obtained by mechanisation.
3. Why is it necessary to standardise both financial and cost accounting ? There is much disagreement on this score, but financial and cost accounting are inseparable, and too much distinction is already made. Financial accounting decides the distribution of resources, cost accounting the efficiency of such distribution—two embodiments of the same economic principle.
4. There is an ulterior motive at work—it is a " totalitarian wedge." The answer to this is that if the public want totalitarianism they will get it without any help from standard accounting. In fact, " Soviet Communism," by Sidney and Beatrice Webb, shows that even in a centrally-controlled system, cost accounting has been set up for purposes of decentralisation.

From these few observations we can see that, in spite of certain differences in outlook, both accountants and economists have the same ultimate objective—a better economic system—and should try to co-operate more towards that end.

Publications

Pay As You Earn Simplified. By C. Jamieson, C.A., and W. G. McPhie, C.A (Macdonald and Evans, London. Price 7s. 6d. net.)

Pay As You Earn Income Tax Accounting. Supplement to Machine Accounting. By O. Sutton. (Macdonald & Evans, London. Price 5s. net.)

Payroll Methods, including Pay-as-you-earn Income Tax Procedure. (British Standards Institution, London. Price 2s. net.)

Since the publication of the White Paper covering the outlines of " Pay-as-you-earn " tax deduction, much thought has been given, and even more ingenuity displayed, in attempts to minimise the additional load which was seen to fall on wages and pay organisations. Generally speaking, these attempts fall under two heads : (a) Those which relate to simplification of the official tables, and (b) those which purport to apply mechanical means or manual systems to ease the burdens of aggregation.

Macdonald & Evans now publish two brochures, " Pay As You Earn Simplified," by Jamieson and McPhie, and " Pay As You Earn Income Tax Accounting," by Sutton. The former devotes itself primarily to an explanation of what has come to be known as the " taxable earnings " method of computation, and to the operations, both manual and mechanical, which would almost naturally follow the adoption of this alternative. *Prima facie*, the " taxable earnings " method offers the advantage of reducing all earnings to a common denominator, so as to permit the use of a very much curtailed table. A somewhat limited experience has, however, shown that the official tables can be read with less difficulty and with greater accuracy than was envisaged when the lay-out was first made known. Nevertheless, the more extended tables for the later weeks of the tax year seem likely to increase the time element of reference, and greater error in reading the tax appropriate to the extended range of earnings may also be expected.

Sutton has been satisfied to accept the official tables and to devise a procedure for carrying out the extended perations. He states and argues the case for the adoption of a pay slip. There are, of course, views and opinions, sometimes very strongly held, against giving the worker anything more than a bare minimum of information ; but experience rather confirms the advantages of a detailed pay slip in minimising subsequent enquiries, and these advantages are more than ever demonstrated under " Pay As You Earn." Incidentally, the " Basic pay slip " illustrated on pages 26 and 27 would seem to require the addition of the tax code number to make it complete and to establish continuity from week to week. The use of such a pay slip, with weekly aggregates of pay and tax, should also satisfy the inspector as qualifying for dispensation in keeping the tax deduction card.

Both these brochures can be recommended to those interested in " Pay as you earn." In particular, the simple mathematical treatment of Jamieson and McPhie is a useful introduction to the general problem.

The British Standards Institution continue their good work by issuing booklet BS. 1100, Part 4, 1944, Pay Roll Methods. It summarises and reviews the various methods of pay roll preparation, and the operations incidental thereto, while at the same time explaining the fundamentals of a pay roll organisation. The work of a wages office under present conditions is a perpetual anxiety for the industrial accountant. It suffers the disability of peak loading, with everyone working against the clock, and with little or no opportunity for reviewing progress. " Pay as you earn," however one may look at it or however one may try to get round it, has intensified the peak. This booklet should assist those who carry the obligation of a pay roll to organise their procedure ; to plan their time-tables and loading and to dispose of their available man-power to the best advantage.

The City of London College, Electra House, Moorgate, London, E.C.2, will commence evening classes in September in preparation for the Intermediate and Final Examinations of the Society. There will also be an introductory course for newly-articled clerks and others who have just entered the profession.

Society of Incorporated Accountants

COUNCIL MEETING

TUESDAY, JULY 18, 1944

Present: Mr. Richard A. Witty (President) in the chair, Mr. A. Stuart Allen, Mr. E. Cassleton Elliott, Mr. M. J. Faulks, Mr. C. A. G. Hewson, Mr. Walter Holman, Mr. Bertram Nelson, and Mr. A. A. Garrett (Secretary).

Apologies for non-attendance were received from other members.

COMPANY LAW AMENDMENT

It was reported that the text of the oral evidence given by Mr. E. Cassleton Elliott and Mr. A. Stuart Allen on behalf of the Society to the Cohen Committee on Company Law Amendment had now been published by H.M. Stationery Office, together with the Society's written memorandum.

VISIT OF THE PRESIDENT TO MANCHESTER AND BRADFORD

The President reported that he had visited the Manchester District Society, where he was entertained to dinner by the President (Mr. Alfred Southern) and Committee of the District Society.

He had also conferred with the Committee of the Bradford District Society and had been a guest at a luncheon at which the President of the Bradford Society, Mr. Charles E. Claridge, took the chair.

RESIGNATIONS

The following resignations of membership were accepted with regret: Barker, William (Associate), Buxton; Marks, Christopher Beaven (Associate), London; Smirk, Charles (Associate), Preston.

DEATHS

A report of the death of each of the following members was received with regret:

Allen, James William, O.B.E. (Fellow), London.
Attiwell, Reginald John Tatam (Associate), Birmingham.
Burtt, Robert Petchell (Associate), Henlow, Beds. (*On active service.*)
Carey, Arthur John (Fellow), London.
Christie, Percy (Fellow), Leeds.
Crowther, Ernest (Associate), Barnsley.
Davidson, Herbert James (Fellow), Manchester.
Day, William Henry (Associate), Dagenham.
Dewar, Donald George (Associate), London. (*On active service.*)
Dudbridge, Sidney (Fellow), Stroud, Glos.
Ellis, Charles Alfred (Associate), London.
Fitton, Frederick Arthur (Fellow), Manchester.
Middleton, John James (Fellow), Manchester.
Moulton, Percy Allen (Fellow), Wakefield.
Rivett, Arnold Russell (Associate), Great Yarmouth.
Scott-Taggart, Jack Harry (Associate), Berwick-on-Tweed. (*By enemy action.*)
Wagstaff, Frank Gordon (Fellow), Shrewsbury. (*On active service.*)
Wood, Harold (Fellow), Newport, Mon.

DISTRICT SOCIETIES AND BRANCHES

SCOTTISH BRANCH

A meeting of the Council of the Scottish Institute of Accountants, the Scottish Branch of the Society, was held in Glasgow on June 30. Mr. Robt. T. Dunlop presided. Mr. D. R. Matheson, LL.B., reported on several matters arising out of questions of deferment. The Secretary reported an increase in the number of articled clerks, and also of enquiries. A number of matters affecting the profession in Scotland were also considered and dealt with.

MANCHESTER

Annual Report

Three meetings were held in the latter part of the session: an address on "Pay As You Earn" by Mr. H. M. MacTaggart, Inspector of Taxes; a discussion meeting on "Excess Profits Tax"; and an address on "Costing in relation to Financial Accounts," by Mr. F. A. Pittock, A.S.A.A. The attendance at these meetings included a number of students. As the majority of students are serving in the Forces, no separate activities were arranged.

Members are reminded of the Library facilities available at the offices of the Honorary Librarian, Mr. J. N. Struthers, F.S.A.A.

Two students passed the Final Examination during the year, and ten the Intermediate.

The Committee forwarded to the parent Society its suggestions on Company Law Amendment.

The Accountancy Problems and Research Sub-Committee met to advise a member on a practical point submitted.

Owing to continued ill-health, Mr. Halvor Piggott, F.S.A.A., resigned from the offices of Vice-President and Honorary Secretary, to the great regret of the Committee. Mr. Frank Harrop was appointed Vice-President, Mr. J. D. Hamer Hon. Treasurer, and Mr. C. Yates Lloyd Hon. Secretary.

Contributions were invited to the Arthur E. Piggott Memorial Fund, to commemorate the services rendered by the late Mr. Arthur E. Piggott.

The District Society has 458 members, and 129 students. The Committee regret to report the death of Mr. Norman K. Heatley, F.S.A.A., who had given good service for many years.

YORKSHIRE

Annual Report

There are now 372 members and 226 students, of whom 21 members and 141 students are serving with H.M. Forces.

The President and Secretary of the parent Society, Mr. Richard A. Witty, F.S.A.A., and Mr. A. A. Garrett, visited the Yorkshire Society on July 8, 1944. They discussed points of professional interest with the Committee, and afterwards attended a reception and luncheon at the Great Northern Hotel, Leeds.

Four joint lectures have been held with the Leeds, Bradford, and District Society of Chartered Accountants.

Sub-Committees on Post-War Fiscal Policy and on Company Law Amendment forwarded suggestions to the parent Society for submission to the appropriate Government Departments.

One student was successful in the Final Examination, and two in the Intermediate. Mr. F. Holloway was awarded a Sir James Martin Memorial Exhibition.

PERSONAL NOTE

Mr. Alexander Hannah, Incorporated Accountant, Liverpool and Burscough Bridge, has taken into partnership Mr. George Hackett, A.S.A.A., who served his articles with him and has been a member of his staff for the past fifteen years. The firm will practise under the style of Alexr. Hannah & Co., Incorporated Accountants.

OBITUARY

WILLIAM PRESSLEY

The death took place on July 9 of Mr. William Pressley, Incorporated Accountant, Fraserburgh, at the age of 80 years. Mr. Pressley became a member of the Society of Incorporated Accountants in 1900, and was one of the oldest members of the Scottish Institute of Accountants, the Scottish Branch of the Society. For many years he kept in close touch with the Secretary of the Branch in all matters connected with the Society's interests in the North East of Scotland, particularly with regard to students and candidates in that area. Mr. Pressley retired in 1936, after nearly forty years in public practice in Fraserburgh.

PERCY ALLEN MOULTON

We regret to record the death on May 25 of Mr. Percy A. Moulton, F.S.A.A., senior partner in Messrs. C. A. Moulton and Co., Incorporated Accountants, Wakefield and Barnsley. Mr. Moulton became a member of the Society of Incorporated Accountants in January, 1904, and in the same year was admitted to partnership in the firm founded by his father, the late Mr. C. A. Moulton, F.S.A.A. Mr. Percy A. Moulton was Vice-Chairman of the Wakefield Gas Light Company.